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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,973	02/27/2002	David D. Kiefer	210_271	6900
20874	7590	06/01/2004	EXAMINER	
WALL MARJAMA & BILINSKI 101 SOUTH SALINA STREET SUITE 400 SYRACUSE, NY 13202			BECKER, DREW E	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 06/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/083,973

Applicant(s)

KIEFER ET AL.

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-8, drawn to a method of ripening produce, classified in class 426, subclass 418.
 - II. Claims 9-15, drawn to an apparatus, classified in class 99, subclass 467.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus of group II as claimed can be used to practice another and materially different process, for instance without placing pressure bars between the boxes and walls.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.
5. During a telephone conversation with Thomas Wall on May 20, 2004 a provisional election was made with traverse to prosecute the invention of group II,

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claims 9-15. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-8 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 9-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Claim 9, lines 12 & 14 include a "." At the end of the line. It is not clear where the claim should end.

10. Claim 13 recites "the surrounding ambient". It is not clear what this refers to, the surrounding atmosphere? the surrounding walls?

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 9-12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badalament et al [Pat. No. 6,012,384] in view of Briscoe Jr et al [Pat. No. 6,390,378].

Badalament et al teach a mobile container device comprising a pair of plenum chambers extending rearwardly from a mixing chamber (Figure 4, #34 & 40), stacked rows of cartons (Figure 4, #24), vertically stacked fan means (Figure 4, #60), a gas generator (Figure 2, #116), a fresh air exchanger unit in the form of the rear doors (column 6, line 45), a return air inlet (Figure 7, #56), and pressure bars (Figure 4, #70). Badalament et al do not recite a control means for the fresh air exchanger, gas generator, and fans. Briscoe Jr et al teach a mobile container device comprising a control means for a fresh air exchanger, gas generator, and fans (Figure 2, #5; column 8, lines 12-63). It would have been obvious to one of ordinary skill in the art to incorporate the controller of Briscoe Jr et al into the invention of Badalament et al since both are directed to mobile container devices, since Badalament et al already included fans, a gas generator, and a fresh air exchanger (Figures 2-4, #60, 116; column 6, line 45), and since the control means of Briscoe Jr et al would have provided automatic

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control of these elements and hence improved efficiency. Phrases such as "to activate the fans in a given order" are merely preferred methods of using the claimed apparatus.

13. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badalament et al, in view of Briscoe Jr et al, as applied above, and further in view of Hearne Jr [Pat. No. 6,202,434].

Badalament et al and Briscoe Jr et al teach the above mentioned components. Briscoe Jr et al also teach control of automatic drain valves (column 7, line 65; column 8, line 46). Badalament et al and Briscoe Jr et al do not teach drains in the floor. Hearnes Jr teaches a mobile container device comprising drains in the floor (Figure 1, #114). It would have been obvious to one of ordinary skill in the art to incorporate the floor drains of Hearne Jr into the invention of Badalament et al, in view of Briscoe Jr et al, since all are directed to mobile container devices, since Badalament et al already included the dripping of water onto the floor (column 8, lines 8-19), and since the floor drains and open reservoir of Hearne Jr (Figure 1, #114 & 117) would have provided an convenient means of containing this water while also preventing the floor and boxes from becoming wet.

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cantagallo et al [Pat. No. 3,733,849], Blanco [Pat. No. 5,789,007], Leavens [Pat. No. 5,778,557], Guthrie [Pat. No. 6,431,060], McDonnell et al [Pat. No. 3,683,788], Fracases et al [Pat. No. 6,077,160], Blanco [Pat. No. 5,965,185],


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Parker et al [Pat. No. 6,457,402], Kiefer et al [Pat. No. 6,443,056], and Liston et al [Pat. No. 5,801,317] teach mobile container devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Drew E Becker
Primary Examiner
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5-27-04